SALEHODDIN AHMAD

v.

PP

COURT OF APPEAL, PUTRAJAYA
HASAN LAH JCA
SULAIMAN DAUD JCA
MOHAMED APANDI ALI JCA
[CRIMINAL APPEAL NO: J-05-190-2008]
18 JANUARY 2011

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 9,818.9 grams cannabis - Appeal against conviction and death sentence - Prosecution relying on evidence of only one police witness - Whether evidence should be corroborated - Whether trial judge erred in finding possession proven*

The appellant was convicted and sentenced to death for trafficking in 9,818.9 grams cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). The appellant was arrested by a police party following a tip-off of a drug trafficking activity. The police party was led by a police inspector ('PW4'). According to PW4, the appellant was seen throwing a bag containing the drugs ('P11') when he was running away from the police officers who were trying to apprehend him. He was also said to have put up a struggle whilst being apprehended. The appellant in his defence denied throwing the bag and claimed that he did not know that the men who apprehended him were police officers as they were not in uniform and as there was no official police car in the vicinity. He claimed to have put up the struggle as he was afraid of being robbed or harmed by them. The trial judge held the appellant's defence to be a bare denial that did not raise any reasonable doubt on the prosecution case.

In this appeal, the defence sought to impeach the credibility of PW4 as it was argued that the prosecution relied only on his evidence in convicting the appellant, and that the evidence of the other police officers involved in the arrest of the appellant should have been adduced to corroborate PW4's evidence.

Held (dismissing the appeal)
Per Hasan Lah JCA delivering the judgment of the court:

(1) As PW4 was the officer who led the police party and arrested the appellant, he was duty bound to be observant. He could clearly see what had happened at the scene where the appellant was arrested. Therefore, he was naturally the main witness for the prosecution. As the prosecution was satisfied with his evidence, it was therefore not necessary for the prosecution to call the other members of the police party to corroborate PW4's evidence. (para 21)

(2) The prosecution has discretion, provided that there is no wrong motive, as to whether or not to call any particular witness. There is no obligation compelling the prosecution to call all available witnesses to prove the facts which it desires to prove. Section 134 of the Evidence Act 1950 provides that no particular number of witnesses shall in any case be required for the proof of any fact. (para 22)

(3) The making of a finding of fact is a function reserved by law exclusively for the trial court. The trial judge believed and accepted the evidence of PW4. The finding of facts made by the trial judge turned solely on the credibility of PW4. He had heard and seen PW4 giving evidence. He was in a better position to determine which part of PW4's evidence was to be believed or disbelieved based on the credibility of PW4. He accepted PW4's evidence that the appellant attempted to run away and had thrown the bag P11 in that process. Further, the appellant had put up a struggle when being arrested. It followed that there were no compelling reasons for disagreeing with the trial judge on the issue of possession. (paras 23 & 25)

(4) There was no merit in the appellant's submission that it was impossible for him to have thrown the bag P11 from a distance of 10 meters as claimed by PW4. The appellant misunderstood PW4's evidence on that issue. PW4 did not at any time say that the appellant threw the bag P11 from a distance of 10 meters. What he said was that the appellant was apprehended 10 meters away from the place the bag P11 was thrown. It followed that the evidence undoubtedly showed that the bag P11 was under the control and custody of the appellant. (paras 26, 27 & 28)

(5) Proof of knowledge is very often a matter of inference which varies from case to case. It would be sufficient for the prosecution to prove facts from which it could properly be inferred that the accused had the necessary knowledge. In the present case, there was evidence that the appellant attempted to run away after PW4 identified himself as a police officer. The appellant threw the bag P11 as he was running away and had put up a struggle when he was apprehended by the police. The explanation for his conduct must be given by the appellant pursuant to s. 9 of the Evidence Act 1950. The appellant's conduct led to the *prima facie* inference that he had the *mens rea* possession of the drugs. Therefore, the appellant had the *mens rea* possession of the drugs as correctly held by the trial judge. (paras 30 & 31)

(6) The trial judge was right in invoking the presumption of trafficking under s. 37(da) of the Act against the appellant in view of the weight of the drugs. A *prima facie* case had been proved against the appellant. (para 32)

(7) The defence of the appellant was carefully considered by the trial judge in light of the well-established principles enunciated in *Mat v. PP* and *Mohd Radhi Yaakob v. PP*. The appellant's defence was a bare denial as found by the trial judge. It failed to raise any reasonable doubt in the prosecution's case with regard to *mens rea* possession. (paras 35 & 36)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah disabitkan dan dihukum mati atas kesalahan mengedar 9,818.9 gram ganja di bawah s. 39B (1)(a) Akta Dadah Berbahaya 1952 ('Akta'). Perayu telah ditangkap oleh sepasukan anggota polis ekoran satu maklumat tentang satu kegiatan pengedaran dadah. Pasukan polis tersebut diketuai oleh seorang Inspektor Polis ('PW4'). Menurut PW4, perayu dilihat melemparkan beg yang mengandungi dadah tersebut ('P11') ketika sedang melarikan diri dari anggota-anggota polis yang cuba menangkapnya. Beliau juga dikatakan telah bergelut dan melawan semasa ditahan polis. Perayu dalam pembelaannya menyangkal telah melemparkan sebarang beg, dan mendakwa bahawa beliau tidak tahu bahawa orang-orang yang menangkapnya adalah anggota polis disebabkan mereka tidak memakai uniform dan juga kerana tidak ada kereta rasmi polis

berdekatan tempat kejadian. Beliau juga mendakwa terpaksa bergelut kerana takut dirompak atau dicederakan oleh mereka. Apapun, hakim bicara mendapati pembelaan perayu hanyalah satu pembelaan kosong yang tidak membangkitkan apa-apa keraguan munasabah terhadap kes pendakwaan.

Dalam rayuan di sini, pembelaan cuba mengimpeach kredibiliti PW4 sambil mendakwa bahawa pendakwaan hanya bergantung kepada keterangan PW4 bagi mendapatkan sabitan, sedangkan keterangan anggota-anggota polis lain yang terlibat dalam penangkapan perayu perlu juga dipanggil bagi menyokong keterangan PW4.

Diputuskan (menolak rayuan)
Oleh Hasan Lah HMR menyampaikan penghakiman mahkamah:

(1) Oleh kerana PW4 adalah pegawai yang mengetuai pasukan polis dan menangkap perayu, beliau bertanggungjawab untuk lebih melihat halkeadaan. Beliau boleh melihat dengan jelas apa yang berlaku di tempat kejadian di mana perayu ditangkap. Oleh itu, beliau dengan sendirinya menjadi saksi utama bagi pendakwaan. Dan kerana pihak pendakwaan berpuas hati dengan keterangannya, maka ia tidak lagi perlu untuk memanggil anggota-anggota lain bagi menyokong keterangan PW4.

(2) Pihak pendakwaan mempunyai budibicara, dengan syarat tiada apa-apa motif salah, sama ada untuk memanggil atau pun tidak seseorang saksi tertentu. Tiada apa-apa obligasi yang boleh memaksa mereka untuk memanggil semua saksi-saksi yang ada bagi membuktikan fakta yang ingin dibuktikan oleh mereka. Seksyen 134 Akta Keterangan 1950 memperuntukkan bahawa tiada sebarang jumlah saksi tertentu diperlukan bagi membuktikan sesuatu fakta.

(3) Membuat suatu rumusan fakta adalah tugas yang diberikan oleh undang-undang secara khusus kepada hakim bicara. Hakim bicara mempercayai dan menerima keterangan PW4. Rumusan fakta yang dibuat oleh hakim bicara bergantung sepenuhnya kepada kredibiliti PW4. Beliau telah mendengar dan melihat PW4 memberi keterangan. Beliau berada dalam kedudukan yang lebih baik untuk menentukan bahagian mana

dari keterangan PW4 yang boleh dipercayai atau tidak dipercayai berdasarkan kredibiliti PW4. Beliau menerima keterangan PW4 bahawa perayu cuba melarikan diri dan dalam keadaan itu telah melemparkan beg P11. Selain itu, perayu juga telah bergelut apabila cuba ditangkap. Ianya mengikut bahawa tiada alasan kukuh untuk tidak bersetuju dengan hakim bicara atas isu milikan.

(4) Tiada merit pada hujah perayu bahawa adalah mustahil baginya untuk melemparkan beg P11 sejauh 10 meter seperti yang didakwa PW4. Perayu telah salah faham akan keterangan PW4 atas isu ini. PW4 tidak sekali pun mengatakan bahawa perayu telah melemparkan beg P11 sejauh 10 meter. Apa yang beliau katakan adalah bahawa perayu telah ditangkap 10 meter dari tempat beg P11 dilemparkan. Ianya mengikut bahawa keterangan jelas menunjukkan bahawa beg P11 berada di bawah kawalan dan jagaan perayu.

(5) Pembuktian pengetahuan adalah seringkali merupakan perkara inferens yang berbeza dari satu kes ke satu kes yang lain. Ianya memadai bagi pihak pendakwaan untuk membuktikan fakta dari mana inferens boleh dibuat bahawa tertuduh mempunyai pengetahuan yang diperlukan. Dalam kes ini, terdapat keterangan bahawa perayu cuba melarikan diri selepas PW4 memperkenalkan diri sebagai pegawai polis. Perayu melemparkan beg P11 semasa melarikan diri dan telah bergelut apabila cuba ditangkap oleh anggota polis. Penjelasan mengenai kelakuannya tersebut harus dikemukakan oleh perayu sendiri berdasarkan s. 9 Akta Keterangan 1950. Kelakuan perayu telah membawa kepada inferens *prima facie* bahawa beliau mempunyai milikan *mens rea* dadah. Oleh itu, perayu mempunyai milikan *mens rea* dadah sepertimana yang diputuskan oleh hakim bicara.

(6) Mengambilkira berat dadah, hakim bicara betul dalam mengenakan anggapan pengedaran di bawah s. 37(da) Akta terhadap perayu. Suatu kes *prima facie* telah dibuktikan terhadap perayu.

(7) Pembelaan perayu telah dipertimbang secara halus oleh hakim bicara dengan mengambilkira prinsip-prinsip mantap yang dibentangkan di dalam *Mat v. PP* dan *Mohd Radhi Yaakob v. PP*. Pembelaan perayu hanyalah suatu pembelaan kosong

A seperti yang didapati oleh hakim bicara. Ia gagal membangkitkan sebarang keraguan munasabah terhadap kes pendakwaan berhubung dengan milikan *mens rea*.

Case(s) referred to:

B *Abdullah Zawawi Yusoff v. PP [1993] 4 CLJ 1 SC* ***(refd)***
Chan Pean Leon v. PP [1956] 1 LNS 17 HC ***(refd)***
Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC ***(refd)***
Lai Ching Chong v. PP [1997] 1 JCr 234 ***(refd)***
Low Kian Boon & Anor v. PP [2010] 5 CLJ 489 FC ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
C *Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC* ***(refd)***
Parlan Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Badrulsham Baharom [1987] 1 LNS 72 HC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No. 3) [1999] 2 CLJ 215 HC ***(refd)***
D *PP v. Ling Tee Huah [1980] 1 LNS 212* ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 HC ***(refd)***
PP v. Nik Ahmad Aman Nik Mansor [2002] 6 CLJ 369 HC ***(refd)***

Legislation referred to:

Dangerous Drugs Act 1952, ss. 2, 37(da)(vi), 39B(1)(a)
E Evidence Act 1950, ss. 8, 9, 134

For the appellant - Allen Yu Chin Aun; M/s Allen Yu Chin Aun & Co
For the respondent - Tengku Amir Zaki Tengku Abdul Rahman; AG's Chambers

F *Reported by Usha Thiagarajah*

JUDGMENT

G **Hasan Lah JCA:**

[1] The appellant was tried in the High Court of Johor Bahru upon a charge that he did on 18 July 2003 at about 8.30pm at Jalan Canggung 4, Taman Pasir Putih, Pasir Gudang, Johor Bahru traffic in dangerous drugs, to wit, 9,818.9 grams of cannabis, and had thereof committed an offence in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("the Act").

[2] At the conclusion of the trial, he was convicted and sentenced to death and against that decision he had appealed. His appeal was dismissed. We now give the grounds for our decision.

[3] The case against the appellant as found by the learned trial judge is as follows. On 18 July 2003, as a result of a tip-off, alleging a drug trafficking activity, Inspector Ihsan bin Abdullah (PW4) leading a police party consisting of 15 officers, went to Jalan Canggung 4, Taman Pasir Putih, Johor Bahru. On arrival at the place PW4 divided the police party into 3 groups to conduct a surveillance of the area.

[4] At about 9.20pm PW4 was informed that the target car, a Proton Wira bearing registration number JGV 3149 ("the car"), had entered Jalan Canggung 4. After a while the car passed by PW4's car. The car which was driven by a male Malay stopped besides the road about 10 meters from PW4's car. According to PW4 the driver of the car was the appellant and he was alone inside the car.

[5] The appellant got out of the car and was seen holding a black bag in his right hand. PW4 directed his driver, DSM Abdullah bin Kader, to block the appellant's car from the rear with his car. When PW4 got out of his car the appellant ran away. PW4 shouted at the appellant and identified himself as a police officer. PW4 then instructed his men to chase after the appellant.

[6] While the appellant was running away the appellant threw away the black bag he was holding on to the roadside. The appellant was arrested by the police officers about 10 meters from the place where he threw away the bag. There was a struggle before the appellant could be arrested.

[7] In the meantime PW4 went to get the bag (exh. P11) at the roadside. Upon his arrest the appellant was brought to the place where P11 was found. The bag P11 was zipped. In the presence of the appellant the bag P11 was opened by PW4. Inside the bag PW4 found 10 compressed blocks of dried leaves which PW4 suspected to be cannabis.

[8] The appellant and the exhibits recovered were brought back to Pasir Gudang Police Station by PW4. At the Pasir Gudang Police Station the appellant and the exhibits were handed over to the investigating officer, ASP Chew Chee Lee (PW5).

[9] PW5 sent all the 10 compressed blocks of dried leaves to the Government Chemist, Encik Abdullah bin Mohd Yusof (PW6), on 22 July 2003 for analysis and report. PW6 certified that the dried leaves are cannabis within the meaning of s. 2 of the Act, weighing in all 9,818.9 grams.

[10] It was also proved that the registered owner of the car was Norasikin bt. Nordin (PW3), the appellant's wife. She testified that the car was bought in 2003. She never used the car as she did not possess any driving licence. The car had, all the time, been used by the appellant. She testified that she did not keep the proscribed drugs and the bag P11 inside the car.

[11] At the close of the case for the prosecution the learned trial judge, after subjecting the prosecution evidence to maximum evaluation, held that the prosecution had proved a *prima facie* case against the appellant. It was his finding that the prosecution had proved *mens rea* possession of the proscribed drugs by the appellant and in view of the large amount of drugs recovered he invoked the presumption of trafficking under s. 37(da)(vi) of the Act.

[12] The appellant elected to make his defence from the witness box. In essence, his defence was that on that day he went to the place with the purpose of looking for workers. He stopped the car at Jalan Canggung 4, Taman Pasir Putih after he received a call from his friend. While talking to his friend over the phone about the workers a car stopped near his car. He got out of his car and went towards that car. He saw five men walking hurriedly towards him. He became suspicious and so he ran away for safety reason. He was then chased by those men. He was arrested by them at the other side of the road and he was assaulted by them. By that time several passers-by stopped to watch what was happening. He then heard someone said "ini adalah polis, sila jauhi tempat ini".

[13] The appellant claimed that before the warning was given he did not know that the men who chased after him were police officers. They were not in uniform and they did not use any official police car. He explained that he struggled while being apprehended by them because he was afraid of being robbed or being harmed by them. Lastly, he denied that he was carrying the bag P11.

[14] The learned trial judge, having reviewed the testimony of the appellant, held that the appellant's defence was a bare denial and the defence had not raised any reasonable doubt in the prosecution case. The defence also had not rebutted the presumption of trafficking under s. 37(da) of the Act.

[15] Before this court, learned counsel for the appellant contended that the learned trial judge had erred in his finding that the proscribed drugs were in possession of the appellant. Learned counsel for the appellant argued that the prosecution relied on the evidence of only one witness, PW4, to prove possession against the appellant even though there were many other police officers involved in the arrest. He contended that it was wrong for the learned trial judge to accept PW4's evidence just for the reason that PW4 did not have any motive to frame the appellant. As the other officers involved in the arrests were not called to give evidence to corroborate PW4's evidence, learned counsel submitted that there was doubt in PW4's evidence. Furthermore, in his evidence PW4 said he received information that the target car was grey in colour, whereas the car driven by the appellant was green in colour.

[16] Learned counsel for the appellant also submitted that there was doubt in PW4's evidence that he could see the appellant's face and that the appellant was holding the bag as there was no streetlight at the place and PW4 could not have seen the appellant's face as PW4 was behind the appellant.

[17] The next issue submitted by learned counsel for the appellant related to PW4's evidence that the appellant was seen running away and throwing away the bag. Learned counsel contended that it was impossible for the appellant to throw away the bag which was about 10 kilograms in weight to a distance of 10 meters.

[18] Learned counsel for the appellant also submitted that the learned trial judge had erred in giving too much weight on PW4's evidence that the appellant was seen running away and throwing away the bag before he was arrested in deciding that the appellant had knowledge of the content of the bag P11. He contended that the appellant's conduct of running away and resisting arrest could not give rise to an inference that the appellant had knowledge of the content of the bag. In support of that he cited the following cases:

A (a) *Abdullah Zawawi Yusoff v. PP* [1993] 4 CLJ 1,

(b) *Lai Ching Chong v. Public Prosecutor* [1997] 1 JCr 234; and

(c) *PP v. Nik Ahmad Aman Nik Mansor* [2002] 6 CLJ 369.

B **[19]** Learned counsel informed the court that SP4 was found guilty by the Johor Bahru Sessions Court for the offence of corruption on 20 September 2009. However PW4's conviction was overturned by the High Court on 13 May 2010. Such information could not affect the credibility of PW4.

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[20] With regard to the appellant's defence learned counsel for the appellant submitted that the learned trial judge erred in coming to the conclusion that the appellant's defence was a mere denial.

D **[21]** It is to be noted that PW4 was the officer who led the police party to make surveillance and subsequently arrested the appellant. As such he was duty bound to be observant. He could clearly see what happened at the scene where the appellant was arrested. So, naturally he was the main witness for the prosecution. As the prosecution was satisfied with his evidence it E was therefore not necessary for the prosecution to call the other members of the raiding party to corroborate PW4's evidence.

[22] It is trite law that in a criminal trial the prosecution has a discretion, provided that there is no wrong motive, as to whether F or not to call any particular witness. There is no obligation compelling the prosecution to call all available witnesses to prove the facts which it desires to prove (see *PP v. Dato' Seri Anwar Ibrahim (No. 3)* [1999] 2 CLJ 215 (HC); *Low Kian Boon & Anor v. PP* [2010] 5 CLJ 489). In relation to this s. 134 of the G Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact.

[23] The learned trial judge believed and accepted the evidence of PW4. It is settled law that the making of a finding of fact is a H function exclusively reserved by law to the trial court (see *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457). In *Herchun Singh & Ors v. Public Prosecutor* [1969] 1 LNS 52; [1969] 2 MLJ 209, Ong Hock Thye CJ said at p. 211:

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An appellate court should be slow in disturbing such finding of fact arrived at by the judge, who had the advantage of seeing and hearing the witness, unless there are substantial and compelling reasons for disagreeing with the finding: see *Sheo Swarup v. King Emperor* AIR 1934 PC 227.

[24] With regard to PW4's evidence, the learned trial judge had this to say:

Keterangan SP4 adalah mengatakan bahawa pada masa beliau membuat pemerhatian di tempat kejadian, Tertuduh telah keluar daripada motokar yang beliau pandu seorang diri dengan membimbit P11, dan apabila kereta Tertuduh dihimpit Tertuduh telah melarikan diri, dan SP4 menjerit memperkenalkan dirinya, Tertuduh telah terus berlari dan semasa beliau dikejar oleh pasukan serbuan beliau telah mencampakkan P11, dan apabila beliau hendak ditangkap telah berlaku satu pergelutan yang hebat.

Keterangan juga menunjukkan apabila SP4 membuat pemeriksaan ke atas P11 beliau menjumpai ketulan-ketulan mampat berjumlah 10 ketulan yang kemudiannya disahkan oleh SP6 sebagai cannabis seperti ditakrifkan di bawah Seksyen 2 Akta Dadah Berbahaya, 1952.

Dengan ketiadaan keterangan yang berlawanan dan kemungkinan-kemungkinan lain saya telah menerima keterangan-keterangan SP4 di atas sebagai keterangan yang benar dan boleh diterima. Dan saya berpuas hati bahawa pihak pendakwaan telah berjaya membuktikan bahawa Tertuduh mempunyai pemilikan sebenarnya ke atas dadah tersebut.

[25] The finding of facts made by the learned trial judge turned solely on the credibility of PW4. He had heard and seen PW4 giving evidence. The learned trial judge was in a better position to determine which part of PW4's evidence is to be believed or disbelieved based on the credibility of PW4. The learned trial judge accepted PW4's evidence that the appellant attempted to run away and while running away he threw away the bag P11 he was carrying. Further, when the appellant was being arrested he put up a struggle. We had examined the evidence available and we could not find any compelling reasons for disagreeing with the learned trial judge on the issue of possession.

[26] With regard to the learned counsel's submission that it was impossible for the appellant to throw the bag P11 to a distance of 10 meters, we found that there was no merit in that contention as learned counsel had misunderstood PW4's evidence on this issue. In his evidence PW4 said (p 21 of the appeal record):

A … Apabila saya sampai ke belakang motokar suspek, saya terus keluar dan di mana lelaki itu terus melarikan diri. Saya menjerit dan perkenalkan diri sebagai polis. Dan mengarahkan semua anggota kumpulan (1) untuk mengejar suspek.

B Kumpulan (2) dan (3) ada di bahagian atas dan bawah "J4". Lelaki itu melarikan diri melalui hadapan motokar dia dan mencampakkan beg yang dia bawa di tepi jalan, iaitu beg hitam yang dia bawa itu.

C Saya telah pergi ke tempat beg itu dicampakkan dan mengawal beg tersebut. Sementara anggota saya terus mengejar suspek yang melarikan diri ke rumah yang bersebelahan, iaitu di sebelah rumah 55-57 ke arah bawah.

D Suspek telah berjaya ditangkap lebih kurang 10 meter daripada beg itu dicampakkan. Satu pergelutan yang amat dahsyat telah berlaku untuk menahan suspek yang cuba melarikan diri. Tapi akhirnya ditangkap dengan bantuan anggota kumpulan (1) dan (2). Suspek ada meronta-ronta untuk melepaskan diri.

[27] PW4 did not at any time say that the appellant threw the bag P11 to a distance of 10 meters. What he said was that the E appellant was apprehended 10 meters away from the place the bag was thrown.

[28] From the evidence adduced there was no doubt that the bag P11 was under the control and custody of the appellant. The F next issue for determination is whether the appellant knew that the bag contained the cannabis. With regard to knowledge the learned trial judge ruled that:

G Walaupun di dalam ketiga-tiga kes di atas inferen berpihak kepada Tertuduh akan tetapi ia boleh dibezakan dengan kes ini atas alasan-alasan berikut:

(a) Tertuduh telah cuba melarikan diri sebaik sahaja pihak polis SP4 menghampiri kereta beliau dan Tertuduh terus berlari apabila diperkenalkan diri sebagai polis oleh SP4,

H (b) Tertuduh telah mencampakkan P11 ketika berlari, bertujuan untuk memisahkan dirinya dengan barang kes yang dibawanya dengan tangan kanannya;

(c) Jumlah dadah yang dijumpai iaitu 9,818.9 gram adalah satu I jumlah yang berat dan banyak yang dapat mengeluarkan bau, dan barang kes tersebut ada bersama-sama Tertuduh di dalam keretanya pada masa beliau memandu kereta tersebut ke tempat kejadian.

> Faktor-faktor ini diambil secara kumulatif telah membuktikan bahawa Tertuduh sememangnya mempunyai pengetahuan mengenai jenis barang yang beliau bawa pada malam itu. Begitu juga saya bersetuju dengan hujah yang dikemukakan oleh pihak pendakwaan mengenai elemen pemilikan dan pengetahuan secara keseluruhannya.

[29] To establish possession by an accused person of any dangerous drugs or to impute him possession of the said drugs, it must be shown that he had knowledge of the drugs which were found in his possession (see *Public Prosecutor v. Badrulsham Baharom* [1987] 1 LNS 72). In cases where knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. In *Chan Pean Leon v. Public Prosecutor* [1956] 1 LNS 17; [1956] MLJ 237 at p 239 Thomson J said:

> Here again knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances which will support such an inference is infinite. There may be something in the accused's behaviour that shews knowledge, or nature of the thing may be so obvious that it is possible to say 'he must have known what it was' or, again in cases under the Dangerous Drugs Ordinance, there may be a statutory presumption which fills a gap in the evidence.

[30] Proof of knowledge is very often a matter of inference which varies from case to case. It would be sufficient for the prosecution to prove facts from which it could properly be inferred that the accused had the necessary knowledge. In *Parlan bin Dadeh v. Public Prosecutor* [2009] 1 CLJ 717 the Federal Court held that the reaction of the appellant in looking stunned or shocked upon being approached by the police was clearly admissible under s. 8 of the Evidence Act 1950 since it has a direct bearing on the fact in issue as the drugs found were tucked away in the front of the jeans worn by him. The explanation for his reaction must therefore be offered by the appellant himself as required by s. 9 of the Evidence Act 1950.

[31] In the instant case there were evidence that the appellant attempted to run away even after PW4 identified himself as a police officer. The appellant, while running away, threw the bag P11 which contained the proscribed drugs and while he was being

A apprehended by the police officers he put up a struggle. The explanation for his conducts must be given by the appellant pursuant to s. 9 of the Evidence Act 1950. The appellant's conducts when taken together, in our view, lends strength to the *prima facie* inference that he had *mens rea* possession of the B proscribed drugs. We therefore agreed with the finding of the learned trial judge that the appellant had *mens rea* possession of the proscribed drugs.

[32] With regard to trafficking the learned trial judge was right in C invoking the presumption of trafficking under s. 37(da) of the Act against the appellant in view of the weight of the proscribed drugs. The learned trial judge was therefore correct in coming to the conclusion that a *prima facie* case had been proved against the appellant at the close of the prosecution case.

D **[33]** With regard to the defence case, the learned trial judge made the following finding:

> Setelah mengambilkira kehendak-kehendak di atas, saya telah meneliti kes pembelaan, pada pendapat saya keseluruhan versi E Tertuduh semata-mata penafian Tertuduh di dalam keterangannya menafikan berpengetahuan mengenai kandungan P11, bahkan menafikan membawa, mencampak ataupun melihat beg itu sebelum beliau ditangkap. Ini jelas menunjukkan satu penafian secara menyeluruh dan menuduh pihak pasukan serbuan menganiaya F beliau. Tiada alasan yang beliau berikan mengapakah ahli pasukan serbuan, khususnya SP4 berhasrat untuk menganiaya beliau di dalam kes ini.

[34] The learned trial judge further held that the appellant had not rebutted the presumption of trafficking of the proscribed G drugs.

[35] The defence of the appellant had been carefully considered in the totality of the evidence adduced by the prosecution by the learned trial judge in the light of the well-established principles H enunciated in *Mat v. PP* [1963] 1 LNS 82 and *Mohd Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 with regard to the approach to be taken in evaluating the evidence of the defence. We are in agreement with the finding of the learned trial judge that the appellant's defence was a bare denial. It is trite I law that a bare denial without other proof to reasonably dislodge the prosecution's evidence is not sufficient (*Public Prosecutor v. Ling Tee Huah* [1980] 1 LNS 212).

[36] We had considered the defence put up by the appellant. The defence of the appellant was difficult to be believed. More importantly it failed to raise any reasonable doubt in the prosecution's case with regard to *mens rea* possession. We came to the conclusion that the learned trial judge was right in convicting the appellant for the offence of trafficking in the proscribed drugs.

[37] For the above reasons we found the appellant's appeal was devoid of any merit. It was dismissed. The conviction and sentence imposed by the learned trial judge were therefore affirmed.